

Internal Revenue Service  
**memorandum**

CC:TL-N-8406-91

Br4:HGSalamy

date:

**AUG 26 1991**

to: District Counsel, Washington, DC MA:WAS  
Attn: D. Crosby

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject:

This is in response to your July 9, 1991 request for formal tax litigation advice in the above-entitled case. Because the issues presented herein were the subject of a Technical Advice Memorandum which the Assistant Chief Counsel (Employee Benefits and Exempt Organizations) desired to reconsider, our offices agreed that formal tax litigation advice was appropriate.

ISSUES

1. Should the "commensurate in scope with its financial resources test" argument be advanced, modified or abandoned in this litigation?
2. Should the pleadings be amended to include inurement, in addition to private benefit, as a basis for non-exemption?

CONCLUSION

1. The "commensurate in scope with its financial resources test" argument should be advanced, albeit in modified form, in this litigation.
2. Inurement should be raised by the respondent in an amendment to the answer.

DISCUSSION

1 and 2. Conversations with your trial attorney Dianne I. Crosby have kept us current as to pre-trial activities in this case. Petitioner objects to the contents of the administrative record and that matter must be disposed of before the case proceeds on the merits.

Formal coordination was had by us with the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), CC:EE, and that office concurs in the litigation strategy set out in your comprehensive July 9, 1991

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memorandum. The thoroughness with which you discussed the issues made it possible for CC:EE to simply and directly respond and a copy of their August 23, 1991 memorandum to us is attached for your assistance. We submit for your consideration the two suggestions made by CC:EE as you proceed to prepare this case for trial.

In sum, we agree with the litigation strategy proposed by you in this case as follows:

(a) The "commensurate in scope with its financial resources test" will not be set forth by respondent on brief as a separate ground for revocation but will be argued in modified form in support of the private benefit and inurement grounds for non-exemption. The commerciality aspect is recognized as not being a strong argument for the respondent and will similarly be used in aid of private benefit and inurement.


(b) Inurement has been raised in a recently filed amendment to answer. While the respondent bears the burden of proof under this ground, the extensive evidence in the administrative record along with the evidence expected to be presented by respondent at trial should be sufficient for that burden to be met.

As indicated in CC:EE's August 23, 1991 memorandum, that office is continuing its consideration of the scope and applicability of the "commensurate in scope with its financial resources test" apart from the trial strategy in this case. We will keep you advised of developments in that regard. Lastly, both CC:EE and our office share a high opinion of Ms. Crosby's handling of the case to date. The issues presented are ones of widely followed, first impression in connection with charitable fundraising and the strategy adopted by the respondent in the case (and with other charities which were the clients of the discredited promoter, the [REDACTED] organization) will have significant precedent impact for the Service.

MARLENE GROSS

Assistant Chief Counsel  
(Tax Litigation)

By:

  
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Chief, Branch No. 4  
Tax Litigation Division

Incl.

cc 08-23-91 memo fr CC:EE